



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: WN Hunter & Associates

File: B-237168

Date: November 3, 1989

DIGEST

Bid for nursing services at hourly rates was properly rejected as nonresponsive where material submitted with the bid indicated that the protester intended to charge more for overtime and thus rendered its price uncertain.

DECISION

WN Hunter & Associates protests the rejection of its bid under invitation for bids (IFB) No. DAKF40-89-B-0157, issued by the United States Army for nursing services at Womack Army Community Hospital, Fort Bragg, North Carolina. The protester alleges that it was the lowest "qualified" bidder and submits that it should have been afforded an opportunity to resolve any deficiencies with respect to its bid after bid opening.

We dismiss the protest.

The IFB contemplated a fixed-price requirements contract for nursing services to cover designated 8-hour shifts in augmentation of the hospital's in-house staff, 365 days a year (inclusive of holidays) for a 1-year period after award. In the bid schedule bidders were required to submit prices in terms of fixed hourly rates for eight line items, each of which represented a particular nursing specialty and contained an estimated number of hours expected to be ordered. The resulting extended line item totals were then to be added to arrive at a total bid amount; award was to be made to the lowest responsive and responsible bidder.

In addition to submitting hourly rates and extended totals for the nursing specialties listed in the bid schedule, WN Hunter submitted a "technical proposal" with its bid which provided, in pertinent part:

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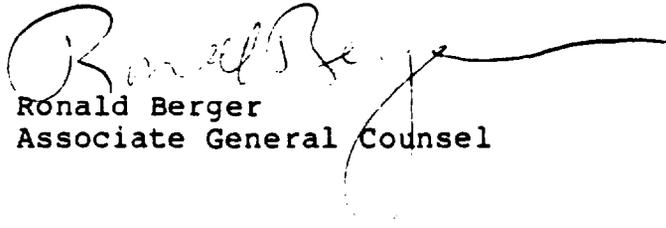
"WN Hunter & Associate employees are paid on a weekly basis for regular and overtime hours actually worked and authorized. Overtime is considered any time over 8 hours in any given workday, or work on a holiday. Army will be invoiced on a weekly basis for the equivalent amount and type of hours."

By letter dated September 19, 1989, the agency notified WN Hunter that its bid had been rejected as nonresponsive because it provided for the Army to pay overtime which was not contemplated by the IFB. In its protest, WN Hunter objects to this decision, which it characterizes as an elimination of its proposal "from the technical range" without a further "opportunity to resolve any deficiencies perceived by the [Army] evaluators." In a supplemental letter, the protester requests a conference to meet with the "technical evaluators" and the contracting officer, and asks for our in camera review of such documents as "evaluation sheets, scoring results and other offerors['] proposal information."

The protester's objections are, to a great extent, cast in terms of procedures relating to competitive negotiations. However, this procurement was conducted pursuant to sealed bidding procedures; thus, bids rather than proposals were submitted, there was no "technical range" and there is no procedure for resolving deficiencies in the bid after bid opening. In sealed bidding a deficiency in a bid may render the bid nonresponsive, and therefore the only valid question presented by the protester is whether its bid was properly rejected as nonresponsive.

Responsiveness is determined as of the time of bid opening and involves whether the bid as submitted represents an unequivocal offer to provide the products or services as specified in the IFB so that acceptance of it would bind the contractor in all significant respects--including price. Hooven Allison--Request for Reconsideration, B-224785.2, Mar. 6, 1987, 87-1 CPD ¶ 257. At best, WN Hunter's bid as submitted created an ambiguity regarding the actual price of the nursing services if its employees worked overtime. Thus, because it was not clear from WN Hunter's bid what the government's total payment obligation would be upon acceptance of the bid, as a matter of law the bid was materially deficient and the agency was required to reject it as nonresponsive. Id.

Since it is clear from WN Hunter's initial submissions that the protest is without legal merit and, therefore, does not state a valid basis for protest, it is dismissed. Bid Protest Regulations, 4 C.F.R. § 21.3(m) (1989).

A handwritten signature in cursive script, appearing to read "Ronald Berger", with a long horizontal flourish extending to the right.

Ronald Berger
Associate General Counsel